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April 13, 2020

By ECF

The Honorable Katherine H. Parker
United States Magistrate Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: Daniel Kleeberg et al. v. Lester Eber et al., 1:16-cv-09517-LAK-KHP
Reply to Response by C. Ramsey for Wendy Eber (ECF No. 303)

Dear Judge Parker,

I write to address just four significant points in Colin Ramsey's response letter.

First, and most importantly, the assertion that the Court lacks jurisdiction over Alexbay, LLC due to Lester's passing is unsupported and illogical. The case cited with a "see generally" signal does not help them. In *English v. Murphy-Lattanzi*, there was *only one* defendant: an individual who died. As a result, summary judgment motions were put on hold until a proper party could be substituted—otherwise, there was *no one* to enter judgment against. 2015 WL 630248, at *1.

Despite the fact that Mr. Ramsey avoided checking the box for "Alexbay, LLC" when filing on ECF, it is simply untrue that Alexbay is currently "unrepresented"—Mr. Ramsey and two of his colleagues continue to represent Alexbay, which is legally separate from and survives Lester's death. Unlike Lester Eber himself, there will be no "substitution" of any new party for Alexbay.

Second, submitting the email from Mr. Ramsey for the factual statements it contained was not "improper." A settlement communication is not a license to lie. Indeed, Rule 408 only precludes the use of such communications "to prove or disprove the validity or amount of a disputed claim," FRE 408(a), or for impeachment, *id.*, but Plaintiffs were using this one "for another purpose," FRE 408(b); namely, to show that the Eber-CT situation was *undisputedly* bad (at least until we asked the Court to empower my clients to remedy the situation).

Third, the disclosure of "the Ebers' long term succession plan" is somewhat surprising—at least in terms of how different it is than the Ebers' sworn deposition testimony. *Compare* Ramsey Ltr. 3–4 ("It has long been the expectation that Wendy would take over the running of the business one day.") *with* L. Eber Dep. 393:7–16 (after refusing to answer questions about the disposition of assets in his will, denying ever having "any discussion with Wendy Eber about what will happen in terms of control of Eber Connecticut and the related entit[ies'] business upon your

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demise”); W. Eber Dep. 230:7–232:18 (denying any discussions with Lester about succession of interest in Alexbay while playing coy about what she thought and wanted (e.g., “You know, I haven’t really thought about it that closely.”)). Like their depiction of a failing business that they desperately wanted to keep, which supposedly became “stable” after its CEO passed away, this is just one more instance where their story changes depending on the objective of the day.

Finally, my clients certainly recognized the sensitivity of this situation, but necessity trumped sensitivity. Notably, Wendy did not even tell her cousins of their uncle’s illness or passing. My clients’ longstanding distrust of Wendy predates her disingenuous deposition testimony. It certainly has nothing to do with her gender (indeed, two of my clients are women who are not at all afraid to speak their minds and tell me what to do, including filing this motion despite the risks). Rightly or wrongly, my clients believe that removing Wendy and reinstating John Slocum, if possible, is the only way to protect their inheritance of 2/3 of the business.

I myself recently spoke with Mr. Slocum directly, as I told Eber-CT’s lawyer in the non-competition case.¹ While he was understandably non-committal, Mr. Slocum expressed interest in returning to help run the company that his grandfather founded—a company previously owned by the company that my clients’ grandfather founded before being transferred to Alexbay, divesting my clients’ of their majority share, so that Lester’s child could be entrenched in power when this day ultimately came to pass. *That* was “the Ebers’ long term succession plan.”

The bottom line is this: We are not asking this Court to do anything different than we already asked before the pandemic and Lester’s passing. We only respectfully request that this Court take these extraordinary circumstances into account when balancing its caseload. As our earlier Proposed Order reflected, we have always believed that bifurcating some issues for faster judgment was important. Now it is essential.²

Respectfully submitted,



Brian C. Brook

cc: All counsel of record

¹ Last month, Eber-CT subpoenaed Daniel Kleeberg to take his deposition and force him to produce an extensive volume of documents, most of which have nothing to do with John Slocum, but instead are geared towards ascertaining our plans for the company after this Court rules on summary judgment.

² If it would help the Court to do so, my clients will simply withdraw other portions of their pending motion. We would respectfully request a conference call be scheduled to be so advised.

<p style="text-align: right;">Page 390</p> <p>1 L. EBER</p> <p>2 taken upon.</p> <p>3 MR. BROOK: I will ask the questions and</p> <p>4 then the consequences will be what they are if</p> <p>5 you instruct him not to answer.</p> <p>6 Q Does your will provide for what will</p> <p>7 happen to your interest in Alex Bay upon your</p> <p>8 demise?</p> <p>9 MR. RAMSEY: Don't answer.</p> <p>10 A I will not answer it.</p> <p>11 Q Have you discussed what's in your will</p> <p>12 with Wendy Eber?</p> <p>13 A I will not answer it.</p> <p>14 Q Have you discussed what's in your will</p> <p>15 with David Eber?</p> <p>16 A I will not answer it.</p> <p>17 Q Have you told Wendy that she can expect to</p> <p>18 take over Alex Bay if you pass away?</p> <p>19 MR. RAMSEY: Hold on. That's separate and</p> <p>20 apart from the will?</p> <p>21 MR. BROOK: I mean, yeah.</p> <p>22 MR. RAMSEY: That's a different</p> <p>23 conversation. What's in his will is different</p> <p>24 than any conversations he might have had. I</p> <p>25 think if you want to talk about did he have a</p>	<p style="text-align: right;">Page 392</p> <p>1 L. EBER</p> <p>2 time is 3:30 p.m.</p> <p>3 (A break was taken.)</p> <p>4 VIDEOGRAPHER: We are back on the record.</p> <p>5 The time is 3:37 p.m.</p> <p>6 Q So it's been brought to my attention that</p> <p>7 during the break you had a chance to speak with your</p> <p>8 counsel about the last question that I asked you,</p> <p>9 Mr. Eber; is that right?</p> <p>10 A Yes.</p> <p>11 Q So now you're prepared to answer that</p> <p>12 question?</p> <p>13 A Why don't you rephrase it again.</p> <p>14 Q Have you had any discussions with Wendy</p> <p>15 Eber about what will happen with your interest in</p> <p>16 Alex Bay upon your demise?</p> <p>17 A No.</p> <p>18 Q Why were you reluctant to tell me no.</p> <p>19 MR. RAMSEY: Form. Don't answer that.</p> <p>20 You can ask a new questions.</p> <p>21 A My discussions are about the management of</p> <p>22 the business with her.</p> <p>23 Q If the discussion never happened why were</p> <p>24 you reluctant to just tell me no?</p> <p>25 MR. RAMSEY: Form. He's answered the</p>
<p style="text-align: right;">Page 391</p> <p>1 L. EBER</p> <p>2 conversation with Wendy about what's going to</p> <p>3 happen. Maybe it's reflected but maybe it's</p> <p>4 not. It's different.</p> <p>5 MR. CALIHAN: I think the most important</p> <p>6 thing about the question is you said if he</p> <p>7 passes away and recognizes that Lester might be</p> <p>8 immortal, which I think --</p> <p>9 MR. BROOK: I'm trying to do it any way</p> <p>10 that doesn't overly emphasize.</p> <p>11 Q Regardless of whether it's consistent of</p> <p>12 what's in your will or not have you ever had a</p> <p>13 discussion with Wendy about whether she would take</p> <p>14 over Alex Bay on your demise?</p> <p>15 A I'm not answering.</p> <p>16 MR. RAMSEY: Lester, we're not talking</p> <p>17 about the will just whether you had a</p> <p>18 conversation with Wendy about that. Maybe you</p> <p>19 have or you haven't but you can answer that</p> <p>20 question.</p> <p>21 A I don't have an answer for you.</p> <p>22 Q Are you refusing to answer the question?</p> <p>23 MR. CALIHAN: Let's take two minutes.</p> <p>24 MR. BROOK: I definitely want an answer.</p> <p>25 VIDEOGRAPHER: Going off the record the</p>	<p style="text-align: right;">Page 393</p> <p>1 L. EBER</p> <p>2 question.</p> <p>3 Q Have you answered the question truthfully?</p> <p>4 MR. RAMSEY: Don't answer that. Let's</p> <p>5 move on, Brian.</p> <p>6 A Yes.</p> <p>7 Q Have you had any discussion with Wendy</p> <p>8 Eber about what will happen in terms of control of</p> <p>9 Eber Connecticut and the related entity's business</p> <p>10 upon your demise?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A No.</p> <p>13 Q Have you had any discussion with Wendy</p> <p>14 Eber about any of your assets, what will happen to</p> <p>15 them upon your demise?</p> <p>16 A No.</p> <p>17 Q Is Wendy Eber ever seen a copy of your</p> <p>18 will?</p> <p>19 A No.</p> <p>20 Q Even though your probate lawyer is also</p> <p>21 representing her it's your understanding that she</p> <p>22 has not had access to that will; is that right?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A Does he represent her?</p> <p>25 Q You said that earlier.</p>

23 (Pages 390 - 393)

<p style="text-align: right;">Page 227</p> <p>1 W. EBER</p> <p>2 regardless of when it was but with the slurred</p> <p>3 speech.</p> <p>4 A Mm-hmm.</p> <p>5 Q What was topic of the conversation during</p> <p>6 that conversation?</p> <p>7 A You know, offhand I don't quite remember</p> <p>8 what it was. It may have been around, winding down</p> <p>9 the trust or I don't know. Maybe we were trying to</p> <p>10 get him off the board. He was trying to resign off</p> <p>11 the board. I don't, like, just off the top of my</p> <p>12 head I don't remember.</p> <p>13 Q Have you ever -- with respect to Lester</p> <p>14 Eber have you ever noticed any instance where his</p> <p>15 mental faculties have declined over the years?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A No. Not to any great extent. I have</p> <p>18 known him a long time, you know, 50-something years.</p> <p>19 No. I mean I think, you know, I played tennis with</p> <p>20 him last weekend so he's pretty spry.</p> <p>21 Q So you said not to a great extent has his</p> <p>22 --</p> <p>23 A I noticed my memory is -- you know, I</p> <p>24 think as you get older -- you know, nothing out to</p> <p>25 the ordinary I think as you get older you're still</p>	<p style="text-align: right;">Page 229</p> <p>1 W. EBER</p> <p>2 Q So you're not aware of any health issues</p> <p>3 that have arisen in the past few months that have</p> <p>4 effected his memory?</p> <p>5 A Health issue?</p> <p>6 Q Yes.</p> <p>7 A No.</p> <p>8 Q And are you aware of any other non-health</p> <p>9 issues that have effected his memory in the last few</p> <p>10 months?</p> <p>11 A No, my mother is very sick, has some</p> <p>12 health issues.</p> <p>13 Q And how, if at all. Do you believe that</p> <p>14 has affected your father?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A You were just asking. You know, I think</p> <p>17 it's the stress, as it's stressful on me too.</p> <p>18 Q For you does encountering stress affect</p> <p>19 your memory?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 A I don't know. I mean, I don't really know</p> <p>22 how to answer that question. I feel like it's more</p> <p>23 an age factor sometime that, you know, normal as you</p> <p>24 get older your memory probably is not as good as it</p> <p>25 was when you were younger. I guess, that's --</p>
<p style="text-align: right;">Page 228</p> <p>1 W. EBER</p> <p>2 very young I think certain things you just don't</p> <p>3 remember as well. You know, like, your body doesn't</p> <p>4 move as well.</p> <p>5 Q I want to stay focused on Lester. So you</p> <p>6 noticed his memory has declined over the recent</p> <p>7 years?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A I mean, not materially, I mean, just, you</p> <p>10 know.</p> <p>11 Q But some?</p> <p>12 A Some.</p> <p>13 MR. RAMSEY: Form.</p> <p>14 A I don't really -- like, I'm not an expert</p> <p>15 in it. I'm just saying nothing other than normal.</p> <p>16 I think my memory has declined too as I have gotten</p> <p>17 older. I think that's just the way the brain, kind</p> <p>18 of, works. I think with Mike, when I spoke to him I</p> <p>19 think it was 2017-ish you could see a remarkable</p> <p>20 difference.</p> <p>21 Q So focusing just on the last few months,</p> <p>22 has anything happened with respect to your father</p> <p>23 have any decline in his memory?</p> <p>24 MR. RAMSEY: Form.</p> <p>25 A I don't think.</p>	<p style="text-align: right;">Page 230</p> <p>1 W. EBER</p> <p>2 MR. CALIHAN: Should I take personal</p> <p>3 offense to this line of questioning?</p> <p>4 MR. RAMSEY: You are the oldest individual</p> <p>5 in the room.</p> <p>6 MR. BROOK: No.</p> <p>7 Q What is your understanding of what will</p> <p>8 happen to Lester's ownership interest in Alex Bay</p> <p>9 when he dies?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A His ownership? I don't know.</p> <p>12 Q Did you have any sense or what will happen</p> <p>13 to Alex Bay when Lester dies?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A No.</p> <p>16 Q Have you ever had a discussion with your</p> <p>17 father about what will happen to Alex Bay when he</p> <p>18 dies?</p> <p>19 A No.</p> <p>20 Q Have you ever wonders about what will</p> <p>21 happen to Alex Bay when he dies?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A I may have wondered. You know, nothing</p> <p>24 out of the ordinary. He's going to work until the</p> <p>25 day he dies. I mean, he is a tremendous resource</p>

4 (Pages 227 - 230)

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1 W. EBER

2 there and he has a lot of contacts and a lot of

3 relationships and it's something that is very

4 valuable to the company so one of things that, you

5 know, I'm trying to do is get more in front of with

6 our suppliers and building my own relationships in

7 the business because at some point, you know, he --

8 you know, obviously, we're all going to die, so at

9 some point he won't be there.

10 Q You do understand, just so we're clear,

11 that Alex Bay has a controlling interest in Eber

12 Connecticut; correct?

13 A Yes.

14 Q So whoever owns Alex Bay owns Eber

15 Connecticut; right?

16 A Yes.

17 Q And do you have any understanding of how

18 trust and estate law works in general in the absence

19 of a will?

20 MR. RAMSEY: Form.

21 A How trust and estate law works?

22 Q Let's just say estate law, when someone

23 dies what happens to their assets? Do you have any

24 sense of that?

25 MR. RAMSEY: Form.

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1 W. EBER

2 MR. CALIHAN: Form.

3 A I'm not a lawyer so I don't know the

4 details.

5 Q Do you believe that you will probably

6 inherit some or all of Alex Bay when your father

7 dies?

8 MR. RAMSEY: Form.

9 A I don't know.

10 Q Do you want to inherit Alex Bay when your

11 father dies?

12 MR. RAMSEY: Form.

13 A Do I want to inherit? You know, I haven't

14 really thought about it that closely. You know,

15 where I have, like, made a decision on that or not.

16 It's a very challenging, day-to-day business,

17 continuing to struggle and it's a lot of

18 responsibility.

19 Q Well, so if you haven't made a decision on

20 that do you have an opinion about whether Alex Bay's

21 ownership of Eber Metro should be rescinded or not?

22 MR. RAMSEY: Form.

23 A I'm sorry.

24 Q Are you aware of the relief that my

25 clients are seeking in this action?

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1 W. EBER

2 MR. RAMSEY: Form.

3 A As far as?

4 Q Do you know what my clients are asking the

5 court to do?

6 A Why don't you update me again.

7 Q Well, I'm asking you. Do you have any

8 understanding of --

9 MR. RAMSEY: Do you understand the legal?

10 A Well, a little bit. I don't know all the

11 details. I don't remember all the details.

12 Q Are you aware that my clients are seeking

13 as their primary relief to have the court rescind

14 the transfer of Eber Metro from Eber Brothers Wine &

15 Liquor Corp. to Alex Bay so that Eber Brothers Wine

16 & Liquor Corp. regains its controlling interest in

17 Eber Connecticut?

18 A Well, now that you repeat it, yes.

19 Q So in the absence of my clients getting

20 their requested relief Alex Bay would continue to

21 control Eber Connecticut; right?

22 MR. RAMSEY: Form.

23 A Right.

24 Q If -- well, let me withdraw that. What is

25 your opinion about whether the transfer of Eber

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1 W. EBER

2 Metro to Alex Bay should be rescinded or not?

3 MR. RAMSEY: Form.

4 A If it should be rescinded?

5 Q Yes.

6 A Because of your client's request?

7 Q Yes. Do you think my clients -- do you

8 have an opinion about whether my clients should get

9 ownership of the company back under Eber Brothers

10 Wine & Liquor Corp?

11 A Yes, I have an opinion.

12 Q What is your opinion?

13 A No, absolutely not.

14 Q Why?

15 A Why?

16 Q You're not sure about whether you would

17 want to inherit ownership of Eber Connecticut

18 yourself; right?

19 MR. RAMSEY: Form.

20 A Well, your asking me why Lester should own

21 the company?

22 Q I'm not asking you -- do you see the Eber

23 Connecticut business as something that's worth

24 keeping?

25 MR. RAMSEY: Form.